



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2018-13]

Simplifying Copyright Registration for Architectural Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations pertaining to the registration of architectural works. To improve the efficiency of this process, applicants will be required to submit their claims through the online application process, rather than a paper application, and they will be encouraged to upload a digital copy of their works through the electronic registration system, instead of submitting a physical copy. The proposed rule also clarifies that a date of construction is needed only if the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990 and if the work was constructed before January 1, 2003. The Office invites public comment on the proposed changes.

DATES: Comments on the proposed rule must be made in writing and must be received in the U.S. Copyright Office no later than [INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the

Copyright Office website at <http://www.copyright.gov/rulemaking/architecturalworks/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; Jordana Rubel, Assistant General Counsel by telephone at 202-707-8040 or by email at rkas@copyright.gov, ebertin@copyright.gov, and jrubel@copyright.gov.

SUPPLEMENTARY INFORMATION: As part of the U.S. Copyright Office's ongoing effort to improve the quality and readability of its regulations, the Office is proposing to amend the rules governing the registration of architectural works, which have remained essentially unchanged since 1992. 57 FR 45307 (Oct. 1, 1992); 68 FR 38630 (June 30, 2003). The regulation pertaining to the registration and application requirements is set forth in 37 CFR 202.11, the regulation governing the deposit requirements for registration is set forth in 37 CFR 202.20(c)(2)(xviii). The regulation governing the mandatory deposit requirements, set forth in 37 CFR 202.19(d)(2)(viii), will remain unchanged. The Office welcomes comments on these proposed changes.

Application Requirements

The current regulation states that applicants must use a paper application to register an architectural work and that the claim must be submitted on Form VA. 37 CFR 202.11(c)(3). This does not reflect the Office's current practices. Since 2008, the Office

has accepted claims submitted through the Office's electronic registration system ("eCO"), and in fact, many architecture claims are filed in this manner.

Under the proposed rule, applicants will be required to submit their claims through the eCO system using the Standard Application. The Office will no longer accept architectural works submitted for registration on a paper application using Form VA. If a paper application is received after the effective date of this rule, the Office will refuse registration and instruct the applicant to resubmit the claim on the Standard Application.¹

A substantial majority of the U.S. population has access to the internet, and the Office expects that most architects will be able to use the electronic system. *See* 81 FR 86643, 86648 & nn. 15-16 (Dec. 1, 2016). Architects typically use sophisticated computer software to create their works, and thus, should be capable of using the Standard Application to register their claims.²

The Office believes that requiring applicants to use the Standard Application, rather than Form VA, is necessary to improve the overall efficiency of the registration process. Most claims submitted on Form VA require correspondence or other action from the Office. Applicants often fail to provide information expressly requested on the form, or add extraneous information that is not requested. In each case, the Office must scan

¹ The Office recently issued a notice of proposed rulemaking clarifying that the Single Application may not be used to register an architectural work. The Single Application is an electronic application designed "for those authors who file the simplest kind of [claim]." 78 FR 38843, 38845 (June 28, 2013). Architecture claims are not a good fit for this application because they tend to be very complex. 83 FR 5227, 5228 (Feb. 6, 2017). To avoid potential confusion, the proposed rule removes the word "single" wherever it appears in the regulation on architectural works.

² As with other rules recently promulgated by the Office, the proposed rule would allow the Office to waive the online filing requirement in exceptional cases. Applicants who do not have internet access and are unable to use the Standard Application may request a waiver in writing. The Office will review each request and will make accommodations for applicants who receive a waiver, such as making staff available to assist with filling out the application.

these paper applications into the registration system and input the relevant information by hand. This is a cumbersome, labor-intensive process. Addressing these issues imposes significant burdens on the Office's limited resources, and has had an adverse effect on the examination of other types of works within the Visual Arts Division.

The regulation also states that applicants should provide "[t]he date of construction of the building," and "[i]f the building has not yet been constructed" the application should include a statement to that effect. The proposed rule clarifies that this information is only needed if the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990 and if the building was constructed before January 1, 2003. *See* 37 CFR 202.12(d)(3)(i) (buildings constructed before December 1, 1990 not eligible for copyright protection); *id.* at 202.12(d)(3)(ii) (unconstructed buildings embodied in unpublished drawings or plans as of December 1, 1990 not eligible for copyright protection unless the building was constructed by December 31, 2002). In all other cases, a date of construction is not needed.

Deposit Requirements for Registration

Under the current rule, to register an architectural work with the Copyright Office, applicants must submit "one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangements of spaces and/or design elements" being registered. If the building has been constructed, applicants also must submit photographs of the work. 37 CFR 202.20(c)(2)(xviii)(A), (B). The proposed rule clarifies that the "overall form of the building" refers to exterior elevations of the building when viewed from the front, rear,

and sides, while “interior arrangements of spaces and/or design elements” refers to walls or other permanent structures that divide the interior into separate rooms and spaces.

In addition, the proposed rule would amend the deposit requirement by allowing applicants to submit drawings, and photographs of an architectural work in any form that allows the Office to access, perceive, and examine the entire copyrightable content of the work, including by being uploaded through the electronic registration system in an acceptable file format.³ In doing so, the proposed rule removes language listing an order of preference for drawings and photographs that are submitted in a physical format.

The Office routinely accepts digital copies of architectural works instead of requiring physical copies as stated in the current regulation, and in fact, it prefers to receive digital—rather than physical—copies. The Office does not need physical drawings, or photographs to examine an architectural work for copyrightable authorship, or to determine whether the applicant satisfied the formal and legal requirements for registration. *See* 17 U.S.C. 410(a) (providing that the Register of Copyrights must determine whether “material deposited [for registration] constitutes copyrightable subject matter”). Electronic submissions take less time to process and are easier to handle than physical copies, in part, because a registration specialist can examine a digital copy as soon as it has been uploaded to the electronic registration system. By contrast, when an applicant files an online application and mails a physical copy to the Office, it takes added time to connect the application with the correct deposit.

Digital uploads may also provide architects with more prompt legal benefits.

When the Office registers an architectural work and issues a certificate of registration, the

³ The list of acceptable file formats is posted on the Office’s website at <https://www.copyright.gov/eco/help-file-types.html>.

effective date of registration is the date on which the Office received the application, filing fee, and deposit in proper form. When an applicant uploads a digital copy to the electronic system, the Office typically receives the application, filing fee, and deposit on the same date. But when an applicant sends physical drawings, or photographs, the deposit may arrive long after the date that the application and filing fee were received—thereby establishing a later effective date of registration. Moreover, digital copies are easier to store and retrieve than physical copies, including if the copyright owner or other interested parties need to obtain a copy of a particular work for use in litigation or another legitimate purpose.

Finally, the proposed rule explicitly identifies architectural works as one of the types of work for which only a single copy is required to be deposited under section 202.20(c)(2)(i). This is a technical edit because the current rule already states that only one deposit copy is required. *See* 37 CFR 202.20(c)(2)(xviii).

Mandatory Deposit Requirements

To be clear, the proposed rule only applies to copies that are submitted for purposes of registering an architectural work under section 408 of the Copyright Act and sections 202.11 and 202.20 of the Office’s regulations. It makes no amendment to the rules regarding copies submitted for the purpose of complying with the mandatory deposit requirement under section 407 of the statute or section 202.19 of the regulations. 37 CFR 202.20(a) (“The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19.”).

Section 407 states that if a work is published in the United States, the copyright owner or the owner of the exclusive right of publication should deposit two copies of the “best edition” of that work with the Library of Congress within three months after publication. 17 U.S.C. 407(a)–(b). Under the current regulations, architects may satisfy this requirement by registering their works with the Office, or by sending copies directly to the Copyright Office’s Copyright Acquisitions Division for use or disposition by the Library without seeking a registration. Because the same copies can potentially be used for both registration and mandatory deposit, the deposit requirements for architectural works currently set forth in sections 202.19 and 202.20, are essentially identical and they both refer to physical drawing submissions.

As noted above, the proposed rule would let architects register their works by providing an electronic copy of their drawings, and photographs instead of a physical copy. But to be clear, a digital copy submitted for purposes of registration does not satisfy the mandatory deposit requirement under section 407, which is outlined in 37 CFR 202.19(d)(2)(viii). To satisfy this requirement, architects submitting electronic registration deposits are expected to deposit a physical copy of the most finished form of presentation drawings, as defined in 37 CFR 202.19(d)(2)(viii), within three months after the work has been published in the United States, and if an appropriate deposit is not received within that time frame, the Copyright Acquisitions Division may issue a written demand for that material under section 202.19 of the regulations.

Technical Amendments

Finally, the proposed rule codifies the Office’s longstanding view that architectural works are considered “works of the visual arts” for purposes of registration,

and as such, they may be registered in Class VA. It also improves the organization and readability of the regulation by removing superfluous references and moving the text of two footnotes into the main body of the regulation. *See* 37 CFR 202.11(a), (b)(1).

List of Subjects in 37 CFR Part 202

Copyright.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office is proposing to amend 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

2. In § 202.3, add a sentence at the end of paragraph (b)(1)(iii) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(1) * * *

(iii) * * * This class also includes published and unpublished architectural works.

* * * * *

3. Amend § 202.11 as follows:

a. Revise paragraph (a).

b. Revise paragraphs (b)(1) and (2).

- c. Remove paragraph (c)(2) and redesignate paragraph (c)(5) as (c)(2).
- d. Revise paragraphs (c)(3) and (c)(4).
- e. Add new paragraph (c)(5).

The revisions and additions read as follows:

§ 202.11 Architectural works.

(a) *General.* This section prescribes rules pertaining to the registration of architectural works.

(b) *Definitions.* (1) For the purposes of this section, the term *building* means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(2) Unless otherwise specified, all other terms have the meanings set forth in §§ 202.3 and 202.20.

(c) * * *

(3) *Registration limited to one architectural work.* For published and unpublished architectural works, an application may cover only one architectural work. Multiple architectural works may not be registered using one application. For works such as tract housing, one house model constitutes one work, including all accompanying floor plan options, elevations, and styles that are applicable to that particular model. Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(4) *Online application.* (i) The applicant must complete and submit the Standard Application. The application should identify the title of the building. If the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990, and if the building was constructed before January 1, 2003, the application should also provide the date that the construction was completed.

(ii) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(4)(i) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(5) *Deposit requirements.* (i) For designs of constructed or unconstructed buildings, the applicant must submit one complete copy in a visually perceptible format of the most finished form of an architectural drawing showing the overall form of the building (*i.e.*, exterior elevations of the building when viewed from the front, rear, and sides), and any interior arrangements of spaces and/or design elements in which copyright is claimed (*i.e.*, walls or other permanent structures that divide the interior into separate rooms and spaces). The deposit should disclose the name(s) of the architect(s) and draftsman(s) and the building site, if known. For designs of constructed buildings, the applicant also must submit identifying material in the form of photographs complying with §202.21, which clearly show several exterior and interior views of the architectural work being registered.

(ii) The deposit may be submitted in any form that allows the Copyright Office to access, perceive, and examine the entire copyrightable content of the work being registered, including by uploading the complete copy and identifying material in an acceptable file

format to the Office’s electronic registration system. Deposits uploaded to the electronic registration system will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under section 407 of title 17 of the United States Code.

* * * * *

4. Amend § 202.20 as follows.

a. Add paragraph (c)(2)(i)(M).

b. Remove and reserve paragraph (c)(2)(xviii).

The addition reads as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(M) Architectural works, for which the deposit must comply with the requirements set forth in §202.11.

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Dated: December 19, 2018.

Regan A. Smith
General Counsel and
Associate Register of Copyrights

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